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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
AT&T Request for Limited Waiver Of the Per-Call Compensation Obligation	)	

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COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL ON FRONTIER'S APPLICATION FOR REVIEW

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May 26, 1998

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COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL ON FRONTIER'S APPLICATION FOR REVIEW

The American Public Communications Council ("APCC") submits the following comments on the application for review of Frontier Corporation, filed May 8, 1998, seeking review of the Bureau's Order, DA 98-701, released April 10, 1998 ("April 10 Order"). In that order, the Bureau prescribed an allocation of the flat-rate payphone compensation to be paid by IXCs for those payphones for which per-call compensation will not be feasible for the foreseeable future. The payphones in question are: (1) payphones served by non-equal-access switches; and (2) smart payphones that are served by LECs that have determined that the cost of implementing Flex ANI in their switches is so high as to be unrecoverable. In an earlier Memorandum Opinion and Order, DA 98-642, released

April 3, 1998, the Bureau had prescribed the level of compensation for these payphones based on an assumed call volume of only 16 calls per payphone per month.

Frontier contends that the Bureau should not have allocated compensation for these payphones[1] among only the top ten carriers receiving the highest amount of subscriber 800 and access code calls as indicated by the Local Exchange Carrier ("LEC") Coalition data. See Attachment 1. Frontier contends that this approach is foreclosed by the Court's opinion in Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997).

APCC does not support Frontier's application for review. The waivers in question apply, or should apply, to a very small percentage of the total number of payphones.[2]

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[1] Frontier requests review of the allocation for non-equal access payphones, but does not mention the other class of payphones to which the same allocation applies, namely smart payphones that are served by LECs that have determined that the cost of implementing Flex ANI in their switches is so high as to be unrecoverable. However, any reconsideration of the allocation logically should apply to both classes of payphones.

[2] At last count, the total number of non-equal access lines (including residential and business lines as well as payphone) lines was 915,779, or about 0.6% of all presubscribed lines. Although the percentage of payphone lines that are served by non-equal-access switches could be higher than the percentage of other lines that are served by non-equal-access switches, the total number of payphone lines is clearly on the order of 1% or less.

As for smart payphones served by LECs that cannot recover the costs of converting to Flex ANI, the number of LECs and payphone lines affected is currently unknown, because LECs were not required to individually request waivers, or even to inform the Commission if they had decided that they qualify for the waiver. However, the lines served by non-Tier 1 LECs (i.e., those that are not required to report data to the Commission) total about 7.4% of all presubscribed lines. Statistics of Communications Common Carriers, 1995/96 Edition, Table 2.3. Even if as many as 20% of those lines are served by LECs that qualify for permanent waivers, and if 50% of payphones served by those LECs are smart payphones, the percentage of payphone lines subject to this waiver would be on the order of 1%.

Thus, any overpayment by the top ten carriers due to exclusion of other carriers is likely to have a de minimis impact on those carriers' overall payphone compensation obligations. Unlike the independent payphone service providers ("PSPs") that provide many of the payphones in question, which are generally small businesses and are severely impacted by setting the overall level of compensation at 10% of the appropriate level,[3] the top ten carriers are giant, nationwide organizations that will not be significantly affected by the relatively minor discrepancies between what they would pay in a perfect per-call system and what they would pay under the Bureau's waiver allocation.

However, in the event that the Commission decides it is necessary to include additional carriers, beyond the top ten, among the payers of compensation to payphones served by non-equal access switches or smart payphones served by LECs subject to a permanent waiver of the payphone-specific-digits requirement, APCC suggests the following possible modifications.

For payments during the "waiver period" (i.e., payments for periods prior to the full implementation of Flex ANI for all payphone lines that were not subject to a permanent waiver of payphone-specific ANI obligation), the Commission could simply extend the set of compensation to require the calls to be allocated among all the carriers for which call

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Thus, the total of payphone lines subject to permanent waiver is not likely to be substantially more than 2%, and could be substantially less than 2%, of payphone lines.

[3] APCC has filed a petition for reconsideration of the Bureau's April 3 Order in which the Bureau prescribed an overall level of compensation for permanent-waiver payphones based on an assumed call volume of only 16 calls per payphone per month. See APCC's Petition for Reconsideration, filed May 4, 1998.

volumes have been identified by the LEC Coalition, with the compensation allocated in accordance with the percentages reported by the Coalition. See Attachment 1. This should satisfy the concerns raised by MCI and Frontier, by ensuring that all carriers that have been identified to the Commission as recipients of dial-around calls pay an appropriate share of the flat-rate compensation prescribed by the Bureau.

For payments due after the "waiver period" (i.e., after the full implementation of Flex ANI for all other payphones), this approach could be modified so that each IXC's compensation payment to each PSP for that PSP's permanently waived payphones would be based on the average volume of calls received by that IXC from that PSP's other payphones. Under this approach, each IXC's payment for a PSP's permanent-waiver payphones would be exactly the same as the IXC's average payment for the PSP's other payphones

In the event that the waiver-period allocation suggested above is considered insufficient for any reason, the Commission could adapt the post-waiver period approach to provide the basis for a true-up of initial compensation payments, between each carrier and each payphone provider. A similar type of true-up for smart payphones subject to temporary waivers is proposed in APCC's petition for reconsideration of the April 3 Order.

Dated: May 26, 1998

Respectfully submitted,

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March 27, 1998

Ms. Rose M. Crellin
Federal Communications Commission
2025 M Street, N.W., Room 6120
Washington, D.C. 20554

Re: Pay Telephone Reclassification and Compensation Provisions of Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Crellin:

I am writing on behalf of the RBOC/GTE/SNET Payphone Coalition regarding the mechanism for calculation of IXCs' compensation obligations during the period when some payphones are not yet transmitting payphone specific digits.

As an initial matter, the Coalition believes it is important for the Bureau to emphasize that the Commission's orders and the Bureau's prior waiver orders make clear that IXCs must pay per-call compensation for all phones that are capable of passing payphone specific digits. If a payphone is capable of passing Flex ANI digits, the mere fact that an IXC has not ordered Flex ANI from the LEC should not affect the IXC's obligation to pay per-call compensation for calls from such payphones. A per-station compensation mechanism should apply only to those payphones that are not yet capable of passing payphone specific digits.

In addition, the Bureau should make clear that IXCs must pay per-call compensation for all 0+, 0-, 1+, and inmate calls that are not otherwise compensated.[1] We do not understand any IXC to claim that it is incapable of tracking such calls. Indeed, because IXCs, as the presubscribed interexchange carrier, is typically required to pay commissions to the premises owner who selected the IXC as the presubscribed carrier, the IXC has been required to track such calls all along.[2]

The Coalition also notes that most IXCs can pay per-call compensation on access code and subscriber 800 calls from all payphones, by relying on ANI lists provided by LECs. To the Coalition's knowledge, only AT&T, WorldCom, Frontier, and LCI have alleged that they are unable to pay per-call compensation based on ANI lists because of the volume of calls involved. Any waiver of the obligation to pay compensation on a per-call basis should extend only to those carriers who have already asked for such relief on a timely basis.

To the extent some waiver relief is required, the Coalition believes that the fairest, most efficient, and probably least contentious way for the Bureau to determine each carrier's per-payphone payment obligation is to rely on the call volume data and distribution data submitted by the Coalition in its ex parte letter of March 24, 1998. That data is presented in amalgamated form in the attached table. The data, collected by three geographically diverse RBOCs, Bell Atlantic South, Pacific Bell, and U S WEST, is fairly representative -- including over 400,000 payphones, more than 20 percent of the nation's total -- and both highly precise and accurate.

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[1]See Second Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, FCC 97-371, ¶ 2 (1997) ("As of October 7, 1997, PSPs must be compensated for all payphone calls not otherwise compensated pursuant to contract, including 0+ and inmate calls.").

[2]In the case of 1+ calls, the IXC must document to the originating PSP the amount of compensation to which the IXC is entitled.

For large, facilities-based carriers, the data presented are relatively consistent across regions; reliance on this sample to establish such carrier's per-payphone obligations is fully justified. The payment obligations of the four carriers who have requested waivers can be easily calculated from the attached data. Total per-payphone compensation for access code and subscriber 800 calls is $40.06 per month (that is, 141.06 calls times $.284). AT&T's share would be $14.85 per payphone per month (that is, 37.08% of the total, or 52.32 calls times $.284). WorldCom's share would be $4.88; LCI's share would be $1.13; and Frontier's share would be $1.10.[3]

The use of the call distribution data may be less appropriate for small regional carriers, who, it might be argued, could face disproportionate burdens because the data submitted are not comprehensive. However, because no small carrier has requested a waiver of the per-call compensation obligation, such carriers should simply be required to pay per-call compensation based on the ANI lists.[4]

In addition, to the extent that the RBOC data includes carriers who are resellers, rather than facilities-based, the Bureau should require that the reseller identify the facilities-based carrier who has incurred the compensation obligations for the calls in question.

The Coalition notes that some have proposed calculating the per-payphone obligation by requiring each IXC to calculate its per-payphone obligation by dividing the number of calls it receives from BOC payphones capable of passing the "27" digits by the number of such payphones. The Coalition believes that this

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[3]This allocation represents a relative bargain for those carriers, because the Coalition payphones that are most often incapable of passing payphone specific digits are generally smart phones, which tend to have the highest volume of calls.

[4]Alternatively, the Bureau could adopt the RBOC distribution list for the ten or fifteen largest carriers, and require per-call payments from the rest.

method is inferior to the one proposed above, because it is less accurate and less comprehensive than reliance on the RBOC data submitted. Indeed, the Bureau's method threatens to undercompensate PSPs quite severely. The payphones that this proposed method would treat as representative are in fact consistently among those payphones with the lowest call volumes, in large part because any BOC with a combination of smart and dumb payphones will tend to place smart phones in the highest volume locations and leave dumb phones in low volume locations.

However, in the event that the Bureau does choose to rely on this approach, the RBOCs will undertake to provide to IXCs as quickly as possible a list of all payphones that pass the "27" digits on all payphone calls. It will then be incumbent upon the IXCs to determine how many calls are received from those lines.

Finally, the Bureau should reaffirm that IXCs must pay compensation for all calls for the October 1997 through December 31, 1997 period on April 1, 1998. There is simply no excuse for an IXC to fail to pay per-call compensation for all payphones capable of passing payphone specific digits on April 1. To the extent that per-payphone obligations will be delayed to permit the implementation of a mechanism for calculation of such obligations, the Bureau should set a clear and expeditious timetable for the payment of any per-payphone obligations.

If I can provide any additional information or clarification, please call me at (202) 326-7902.

Yours sincerely,

Michael Kellogg

Michael K. Kellogg

cc: Glenn Reynolds
Craig Stroup
Jennifer Myers

Combined Call Volumes
Carriers A, B, C
Calls by Carrier
1-800 Access, 1-800 Subscriber and 10XXX Calls

Carrier	CICs	Average Calls per Station per Month	% of Average calls per month total
AT&T	0288, 0387, 0732, 1288, 0375, 0988, 0686	52.32	37.08%
MCI	0022, 0088, 0122, 0888, 0898, 1022, 0222	35.74	25.33%
WorldCom	0446, 0450, 0488, 0555, 0999, 1001, 1053, 1055, 1212, 1267, 1311, 1312, 1450, 1555, 1786, 1801, 1999, 0535, 0001, 0050, 0053, 0212, 0266, 0312, 0555, 0569, 0683, 0737, 0789, 0801, 0995, 0999	17.17	12.17%
Sprint	0033, 0872, 1033, 0333	15.18	10.76%
LCI	0040, 0432, 0537, 0757	3.99	2.83%
FRONTIER	0003, 0086, 0211, 0052, 0066, 0260, 0322, 0400, 0444, 0500, 0511, 0539, 0569, 1044, 1066, 1539	3.89	2.76%
RBOC weighted average		3.09	2.19%
Allnet Dial 1 Service	0444	1.60	1.14%
Cable & Wireless	0223	1.33	0.95%
Switched Service	0948	0.89	0.63%
ATX Telecom Services	0004	0.64	0.45%
TELECOM*USA (MCI)	0087, 0220, 0224, 0321, 0826, 0832, 0835, 0852, 0876	0.52	0.37%
Total-Tel USA, Inc.	0081	0.32	0.22%
TEL AMERICA	0700	0.30	0.21%
Business Telecom, Inc. (BTI)	0833	0.29	0.21%
Telco Communications Group dba Dial & Save	0457	0.28	0.20%
US Long Distance	0070	0.28	0.20%
Eastern Telecom International	0136	0.26	0.18%
MFS	0440	0.25	0.18%
Access Long Distance	0937, 0991, 1990	0.21	0.15%
Westinghouse Electric Corporation	0946	0.14	0.10%
Americall	0099	0.13	0.10%
US WATS	0200	0.13	0.09%
EconoPhone Inc.	0604	0.13	0.09%
U.S. LONG DISTANCE, INC.	0070	0.12	0.08%
Execulines of Sacramento	0511	0.11	0.08%
Chadwick Telephone	0909	0.10	0.07%
Bittel Telecommunications	0867	0.10	0.07%
Deluxe Data Systems	0693	0.09	0.07%
American Long Lines	0241	0.08	0.06%
WorldXChange	0502	0.07	0.05%
One Star Long Distance	0873, 1873	0.06	0.04%
Eastern Telephone Systems, Inc	0054	0.05	0.04%
North American Communications Inc.	0933	0.05	0.04%
ATI Telecom, Inc.	5810	0.05	0.04%
OCI	0658, 0805	0.05	0.04%
OPTICOM ONE CALL	0880	0.05	0.04%
Capital Telecommunications, Inc.	0221, 0963	0.04	0.03%

Combined Call Volumes
Carriers A, B, C
Calls by Carrier
1-800 Access, 1-800 Subscriber and 10XXX Calls

ICON COMMUNICATIONS	0706, 1706	0.04	0.03%
SHARED COMMUNICATIONS SERVICES	0246	0.04	0.03%
Call America Business Comm.	0344	0.04	0.03%
SWITCH 2000 INC -	0727	0.04	0.03%
FTI COMMUNICATIONS	0735, 5735, 5772	0.03	0.02%
LONG DISTANCE WHOLESALE CLUB	0297	0.03	0.02%
U S LINK	0355	0.03	0.02%
TELTRUST, INC	0485	0.03	0.02%
Cooperative Communications, Inc.	5559	0.03	0.02%
Network Plus	0764	0.03	0.02%
LONG DISTANCE/USA (SPRINT)	0252	0.02	0.02%
Long Distance Telephone Savers	0213	0.02	0.02%
NEXTLINK	0468	0.02	0.02%
DIAL & SAVE	0457	0.02	0.02%
Cleartel Communications	0548	0.02	0.01%
SP Telecom	0056	0.02	0.01%
TOUCH AMERICA, INC.	1335, 0335	0.02	0.01%
TELEPHONE EXPRESS	0699	0.02	0.01%
Citizens Communications	0096	0.02	0.01%
TCG	0303	0.02	0.01%
FOX COMMUNICATIONS	0637	0.02	0.01%
GENERAL COMMUNICATION INC	1077, 0077	0.02	0.01%
ICG	0513	0.02	0.01%
WESTEL, INC.	0085	0.01	0.01%
FRESH START COMMUNICATIONS - FSC	5665	0.01	0.01%
QWEST COMMUNICATIONS	0056	0.01	0.01%
CUSTOMER TELECOM NETWORK (CTN)	0586	0.01	0.01%
CALL AMERICA	0300, 5045	0.01	0.01%
Ameritel	0794	0.01	0.01%
U S COMMUNICATIONS, INC.	0879	0.01	0.01%
AMNEX	0370	0.01	0.01%
NTI/NATIONAL TELESERVICE	0401	0.01	0.01%
IOWA COMMUNICATIONS NETWORK	0283	0.01	0.01%
ELECTRIC LIGHTWAVE, INC.	0802	0.01	0.01%
NORLIGHT, INC.	0499, 0837, 0912	0.01	0.01%
AMERICAN SHARECOM	1400	0.01	0.01%
American Network Exchange Inc., sub. of AMNEX, Inc.	0370	0.01	0.01%
ITC NETWORKS	1468, 1478, 0478	0.01	0.01%
NORTHWEST TELECOM	0638	0.01	0.01%
SHARENET COMMUNICATIONS	0549	0.01	0.00%
PHOENIX NETWORK, INC.	0244, 0420	0.01	0.00%
ATHENA INTERNATIONAL, LLC	0822	0.01	0.00%
FIRSTEL	0475	0.01	0.00%
UNICOM	0955	0.01	0.00%
POPP TELCOM	0477, 1477	0.01	0.00%
Keystone Telecom, Inc.	0545	0.01	0.00%
EMPIRE ONE TELECOMMUNICATIONS, INC.	0359	0.01	0.00%
MIDCO COMMUNICATIONS	0338, 0996	0.01	0.00%
All Others		0.16	0.11%
Total		141.10	100.00%
		141.06*	
*Adjusted for inclusion of inmate calls by Carrier C.			

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 1998, a copy of the foregoing Comments of the American Public Communications Council on Frontier's Application for Review was delivered by first class, U.S. mail to the following:

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